IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 1926 of 2007(D)

PETITIONER:

GOPALAN S/O.SANKUNNI,
KOLAMBIL HOUSE, MANNARKKAD COLLEGE POST,
MANNARKKAD.

BY ADV. SRI.E.R.VENKATESWARAN,
SRI.R.SREEHARI.

RESPONDENTS:
----

1. **THE ASST.EXECUTIVE ENGINEER,**
   ELECTRICAL SUB DIVISION, KSE BOARD,
   MANNARKKAD.

2. **N.SANTHAKUMARI, W/O.LATE KRISHNAN,**
   KOLAMBIL HOUSE, MANNARKKAD COLLEGE POST,
   MANNARKKAD.

3. **THE ADDL.DISTRICT MAGISTRATE,**
   OFFICE OF THE ADDL.DISTRICT MAGISTRATE,
   PALAKKAD.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB FOR R1,
SRI.K.M.SATHYANATHA MENON FOR R2,
SR. GOVT. PLEADER SMT. M.K. PUSHPALATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.1926/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PETITION FILED BEFORE THE R.3. DTD. 25/01/2006.

EXT.P.2: COPY OF THE STATEMENT DT. 04/01/2006 FILED BEFORE THE R.3. BY THE R.1.

EXT.P.3: COPY OF THE ORDER PASSED BY THE R.3. DTD. 25/01/2006.

EXT.P.4: COPY OF THE O.S. NO. 57/2001 FILED BEFORE THE MUNSIFF MAGISTRATE COURT, MANNARKKAD BY THE R.2. AND OTHERS AGAINST THE PETITIONER.

EXT.P.5: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER HEREIN IN O.S. NO. 57/2001 OF MUNSIFF MAGISTRATE COURT, MANNARKKAD.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR,J.

WP(C)NO.1926 OF 2007-D

Judgment

The petitioner challenges Ext.P3 order of the Additional District Magistrate, rejecting the motion made by the 1st respondent for permission to draw an electricity line to his residence. It appears, the property, through which the line is to be drawn, is jointly owned by the petitioner, the 2nd respondent and her sons. There is a partition suit, pending before the Munsiff's Court, Mannarkkad, concerning the said property. Because of the pendency of the said suit, the motion made by the 1st respondent has been rejected by the Additional District Magistrate, by Ext.P3 order. The petitioner and the 1st respondent prays for setting aside Ext.P3 and remitting the matter for fresh consideration in accordance with law. Even if the property belongs to the 2nd respondent, still, permission can be granted to draw the line provided, the route proposed through that property is the most feasible and the least expensive route. So, the dispute regarding the right over the property or the pendency of a civil suit, is a not a ground to reject the application, submits the learned Standing Counsel for the 1st respondent.

2. The 2nd respondent has filed a counter affidavit, supporting the impugned order. I find considerable force in the submission of the learned Standing Counsel for the 1st respondent. The pendency of a civil suit is not a ground to reject the application of the KSEB. Ext.P3 order has been passed, relying on a totally irrelevant ground. Accordingly, it is quashed and the matter is

remitted to the third respondent for fresh disposal in accordance with law after affording an opportunity of being heard to the petitioner, the 2nd respondent and other affected parties, if any. It is made clear that I have not dealt with the contentions of the 2nd respondent on merits. If she has got any proposal regarding alternative route, the same shall also be taken into consideration by the third respondent while passing final orders in the matter.

The Writ Petition is disposed of as above.

10.04.2007 **K.BALAKRISHNAN NAIR,JUDGE**

sta